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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,994	10/05/2004	Richard Chene	0523-1016	2965
466	7590	06/06/2007		
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER AMIRI, NAHID	
			ART UNIT 3679	PAPER NUMBER
			MAIL DATE 06/06/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/509,994

Applicant(s)

CHENE ET AL.

Examiner

Nahid Amiri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-28 is/are pending in the application.
- 4a) Of the above claim(s) 23-25, 27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-22 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

In view of Applicant's Amendment received 07 March 2007, amendments to the claims have been entered. Claims 1-15 are canceled. Claims 23-25, 27, and 28 are withdrawn. Claims 16-28 are pending.

Claims 23-25 and 27-28 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 28 August 2006.

### *Claim Objections*

Claims 19, 20 and 22 are objected to because of the following informalities:

Claims 19 and 20, line 2, "wherein one at least of the ends" does not make sense as presented. Should this be --at least one of the ends--?

Claim 22, line 2, "claim 16" should be changed to --claim 19--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

**Claims 16-22 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 16, line 5, sets forth a "means" without specifying a corresponding function to be performed by the means. Note the recitation of "elastic means". It is suggested that "being provided to maintain" be changed to --for maintaining-- if that is intended to be the function of the means. Further, claim 16, line 12, is indefinite because of the "such as" language. In

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particular, limitations cannot be set forth in a claim in the form of an example. Accordingly, does the claim require pivoting relative to each other or not? Further still, it is not clear what constitutes the rigid elements and what is supposed to constitute the pivot parts. With respect to claims 21-22, it appears that such claim is misdescriptive and/or inaccurate since anti-rotation features are not found on the pivoting parts (1,3) as disclosed. With respect to claim 22, line 5, there is no antecedent basis for "the notch(es)". Further, limitations cannot be in parentheses. Accordingly, how many notches are present? With respect to claim 26, it is unclear what further structure is being set forth by the naming of the rigid elements as "spectacle side-piece" and "spectacle face". How are these elements further structurally distinguished from any other rigid elements?

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 16-20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morton in view of Warshawsky.**

With respect to claims 16-19, Morton discloses a system of articulation comprising at least one pivot point between one end of a first rigid element (2) and one end of a second rigid element (3), said ends having bearing faces fit for pairing up respectively one on top of the other, elastic means (14) being provided to maintain the bearing contact between said faces, wherein

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said system comprises two pivot parts (19,24), each having a recessed zone (23,25) limited by an at least partially curved surface, each of said pivot parts depending respectively on one of said rigid elements; said pivot parts being substantially orthogonal to each other and engaged one in the other through interlocking of their respective recessed zones so as to be able to pivot relative to each other, with the result that said system comprises two intangible pivot points within the limits permitted it by said recessed zones. The articulation system of Morton does not include a means allowing pivoting only in one or two predetermined planes. However, it is well-known in the art per se to limit the plane of pivoting whenever universality of pivoting is not desired. Warshawsky is evidence of this. Specifically, Warshawsky discloses an articulation system and teaches the inclusion of means to limit pivoting to a single predetermined plane. Accordingly, it would have been obvious to one of ordinary skill in the art to provide Morton with pivot restricting means as taught by Warshawsky so as to limit the pivoting action to a single predetermined plane as one of ordinary skill in the art would have found it desirable to limit the pivoting of Morton to a plane that is transverse to the plane of the head (i.e., the sweeping plane).

With respect to claim 20, the means for limiting the pivoting action can be seen in the figures of Warshawsky to be an axial notch.

With respect to claim 26, the rigid elements of Morton are deemed to be "spectacle side-face and frame" in as much as they possess all structure recited.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 4,492,488 Stonier et al; US Patent No. 3,321,223 Snow et al.; US Patent No. 3,034,402 Alberetti; and US Patent No. 2,715,002 Davis; are cited to show an articulated connection between two members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (571) 272-8113. The examiner can normally be reached on 8:30-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nahid Amiri  
Examiner  
Art Unit 3679  
May 3, 2007



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